APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,737	12/21/2000	Derek Barrett	EMC-00-212	4612

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EXAMINER
FRANCIS, MARK P

ART UNIT	PAPER NUMBER
2193	

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

<table>
<tr><td rowspan="3">Office Action Summary</td><td>Application No.
09/747,737</td><td>Applicant(s)
BARRETT, DEREK</td></tr>
<tr><td>Examiner
Mark P. Francis</td><td>Art Unit
2193</td></tr>
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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>21 December 2000</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-15</u> is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-15</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>21 December 2000</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
       application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____ .

DETAILED ACTION

1.   This action is responsive to the application filed on December 21, 2000.

2.   Claims 1-15 have been examined.

Priority Date

3.   The priority date considered for this application is December 21, 2000.

Oath/Declaration

4.   The Office acknowledges receipt of a properly signed oath/declaration filed

December 21, 2000.

Claim Objections

5.   Claims 5,6,8,9,14, and 15 objected to because of the following informalities:

Regarding claim 5, In line 1 where it says, "The system of claim 5..." should be

changed to "The system of claim 4...". Applicant can only reference a previously defined

claim.(e.g. 1,2,3, or 4)

Regarding claim 6, see the above objection to claim 5.

Regarding claims 8 and 9, in line 1, Applicant states "is imputed" is misspelled

should say, "is inputted".

Regarding claim 14, see above objection to claim 5.

Regarding claim 15, in line 1, Applicant states "at least of the" should say, "at

least one of..."

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

7.   Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

The term "predetermined " in claim 1 and 11 in lines 3 and 6, respectively render

the claims indefinite. The term "predetermined" is not defined by the claims, the

specification does not provide a standard for ascertaining the requisite degree, and one

of ordinary skill in the art would not be reasonably apprised of the scope of the

invention. Applicant did not define the term "predetermined" in the present or a

previously referenced claim and did not provide a description of the basis for

determination inside the specification.

For examination purposes, claims 1 and11's limitation "predetermined" will be

interpreted as "a determined".

The rejection of the base claims is incorporated into the rejection of their

dependent claims.

Claim Rejections - 35 USC § 101

8.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9.   Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.

Regarding claim 1, applicant defines a system for packaging applications on at

least one operating system, comprising the steps of "at least one predetermined

parameter..." and "a process for accessing the native utilities...". Both of the steps

mentioned in claim 1 can be implemented in software alone, thus rendering claim 1 to

be not tangible.

The rejection of the base claims are incorporated into the rejection of their

dependent claims.

Claim Rejections - 35 USC § 102

10.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the

rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-7 and 9-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Maddux.(US 2002/0124245)

With respect to claim 1, Maddux discloses A system for packaging applications that operate on at least one operating system (e.g. See Figs 1 and 2, and related text), the system comprising:

at least one predetermined parameter corresponding to at least one element used by native utilities on the at least one operating system,(Col 7, sections 0210,0213-0216, "...specific elements...based on parameters..."), and

a process for accessing the native utilities for the at least one operating system based on the at least one predetermined parameter.(Col 8, section 0230, "utility FileVer.Exe...", Col 8, section 0254, "...pushing a native...", Col 35, lines 1-13, "...from a process running..." and See Abstract, "...using native routines...")

With respect to claim 2, the rejection of claim 1 is incorporated and further, Maddux discloses wherein the at least one parameter identifies the location of the application

prior to the application being packaged.(Col 2, section 0041, "...at every location...", Col

5, section 0121, "...Before installing..." Col 4, section 0114, "...by identifying...")

With respect to claim 3, the rejection of claim 2 is incorporated and further, Maddux

discloses a second parameter identifying where the application is to be placed after it

has been packaged.(Col 5, sections 0121-0123, "guides you through the deployment

process...",

With respect to claim 4, the rejection of claim 3 is incorporated and further, Maddux

discloses a third parameter identifying a name for the application.(Col 7, section 0210,

"...input parameters defined as name..." Col 8, section 0243-0255,"...to enter the

name...", Col 36, lines 27-36, "...input parameters...as name value pairs...")

With respect to claim 5, the rejection of claim 4 is incorporated and further, Maddux

discloses comprising a fourth parameter identifying an identifier used by an installation

utility in order to identify the application for use by the installation utility. (Col 4, sections

0114-0118, Col 8, section 0230, "...has a console utility...", "...by identifying

departmental file servers...", Col 7, sections 0209-0223,"...generated by a client server

database application..." Col 36, lines 27-36, "utilizing...input parameters...as name

value pairs...")

With respect to claim 6, the rejection of claim 5 is incorporated and further, Maddux

discloses comprising a fifth parameter specifying an identifier unique to the at least one

operating system. (Col 7, sections 0209-0223, "...cause the installation or upgrade of an

operating system...")

With respect to claim 7, the rejection of claim 6 is incorporated and further, Maddux

discloses comprising a sixth parameter identifying the particular version of the

application that is to be packaged.(Col 29, Console Screen Software Tab)

With respect to claim 9, the rejection of claim 1 is incorporated and further, Maddux

discloses wherein the at least one parameter is inputted to the process by a graphical

user interface. (Col 29, Console Screen Software Tab)

With respect to claim 10, the rejection of claim 1 is incorporated and further, Maddux

discloses a plurality of computers connected to each other by a network(Col 3, sections

0079-0080, "...includes target computers..."), wherein the process resides on at least

one of the computers and said process establishes a communication with a second

process residing on another one of the at least one of the computers to enable the first

process to be used to allow the second process to create a software package utilizing

the operating system native to the computer containing the second process.(Col 4,

section 0014-0018, "...A Dm SQL server provides the data access..." and e.g. See

Figs. 1 and 2, and related text)

With respect to claim 11, Maddux discloses a method for building software that

operates on at least one operating system comprising the steps of: determining the

operating system on which the software will operate;(Col 30, "Operating System", Col

31, "Operating System")

providing the location of the files and directories in a server which comprise

the software;(Col 31, "Upgrade from")

providing a location on the sever wherein the location is the place in which the

files and directories will be placed, (Col 33 and 34, "Apply to Selected machines)

wherein in response to steps (a), (b) and (c) utilizing a predetermined set of

programs unique to the operating system in order to create a software package capable

of being installed on installation media.(Col 2 and 3, section 0057-0061, "...as either a

standalone application ...",Col 5, section 0019-0142, "Deployment Media...")

With respect to claim 12, the rejection of claim 11 is incorporated and further, Maddux

discloses providing to the predetermined set of programs, a first identifier of the

software.(Col 7, section 0224, "...to identify the binaries...")

With respect to claim 13, the rejection of claim 12 is incorporated and further, Maddux

discloses providing to the predetermined set of programs, a second identifier of the

software.(Col 7, section 0226, "...identifies version and language unique files...")

With respect to claim 14, the rejection of claim 13 is incorporated and further, Maddux

discloses providing an installation program within the predetermined set of programs,

the components of the software.(Col 4, sections 0113-0118, "...A DM Installation

server...")

With respect to claim 15, the rejection of claim 14 is incorporated and further, Maddux

discloses providing a third identifier unique to at least one of the operating systems.(Col

7& 8, sections 0222-0229, "...generating a specific operating system configuration...")

Claim Rejections - 35 USC § 103

12.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

13.   Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maddux

in view of Fisher. (6,038,399)

The rejection of claim 1 is incorporated and further,

Maddux does not show wherein the at least one parameter is inputted to the process by a command line.

Fisher shows wherein the at least one parameter is inputted to the process by a command line(Col 17, lines 38-53, "...The command line parameters...") in an analogous system for the purpose of providing the ability to install software onto both raw hard drives and assembled computers on the same network. (Col 4, lines 54-58)

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to include command line parameters to Maddux's invention.

The modification would have been obvious because one of ordinary skill in the art would have been motivated to provide the ability to install software onto both raw hard drives and assembled computers on the same network. (Col 4, lines 54-58)

Conclusion

14.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

15.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Mark P. Francis whose telephone number is (571) 272-

7956. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for

the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Mark P. Francis

Patent Examiner

Art Unit 2193

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